



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

200944056

JUL 27 2009

U.I.L. 408.03-00

XXXXX
XXXXX
XXXXX

SE: T: EP: RA: TY

Legend:

Taxpayer A = xxxxx

Individual B = xxxxx

IRA X = xxxxx

Savings Account Y = xxxxx

Financial Institution 1 = xxxxx

Bank 1 = xxxxx

Amount N = xxxxx

Year 1 = xxxxx

Date 1 = xxxxx

Date 2 = xxxxx

Date 3 = xxxxx

Date 4 = xxxxx

xxxxx
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Date 5 = xxxxx

Date 6 = xxxxx

Dear xxxxx:

This is in response to your letter dated April 9, 2009, as supplemented by correspondence dated April 27, May 12 and June 4, 15 and 19, 2009, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code").

The following facts and representations are made under penalties of perjury in support of your ruling request.

Taxpayer A, age 68, received a distribution of Amount N from a traditional individual retirement arrangement, IRA X. Taxpayer A asserts that her failure to accomplish a rollover of Amount N into an IRA within the 60-day period prescribed by section 408(d)(3) of the Code was due to her mental condition which severely impaired her ability to manage her financial affairs in order to accomplish a timely rollover. Taxpayer A further represents that Amount N has not been used for any other purpose.

Taxpayer A was married for more than 40 years to Individual B during which time Individual B managed the couple's financial affairs to the extent that they were not handled by professional financial advisers. Taxpayer A has a long-term mental illness. On Date 1 of Year 1, Taxpayer A's divorce from Individual B became final. As part of the property settlement agreement, the court awarded to Taxpayer A, pursuant to a Qualified Domestic Relations Order (QDRO), an interest equal to Amount N in IRA X maintained by Financial Institution 1 on behalf of Individual B.

On Date 2, Taxpayer A signed and dated a special election form entitled "Alternate Recipient Acceptance Form for Divorce Related Distribution from IRA Contracts" (Form 1) issued by Financial Institution 1 for use in compliance with QDROs. Form 1 has a box-checking format for election among four settlement options, three of which consist of a direct rollover of an amount or percentage of an IRA contract maintained with Financial Institution 1 into an IRA for the benefit of the alternate recipient. The fourth option provides for distribution of an amount or percentage of the IRA contract in the form of a check to be sent to the mailing address of the alternate recipient.

On the Form 1, signed and dated by Taxpayer A on Date 2, the box checked showed election to have Amount N rolled over into an IRA in the name of Taxpayer A. The name and mailing address of Bank 1 were listed as the custodian bank to which Amount N was to be transferred. As of Date 2, Taxpayer A did not maintain an IRA with Bank 1. As of Date 2, Taxpayer A did maintain Savings Account Y with Bank 1.

Two days following Date 2, Individual B signed and dated a form issued by Financial Institution 1 by which, as owner/annuitant of IRA X, he acknowledged the court-ordered award of an interest in IRA X to Taxpayer A and concurred with the transfer of Amount N to her.

As of Date 3, approximately 4 months after Date 2, no IRA had been established in Taxpayer A's name at Bank 1. Financial Institution 1, unable to implement the election Taxpayer A had made, was still holding Amount N for Taxpayer A's benefit.

On Date 3, Taxpayer A completed a new Form 1. On the Form 1, signed and dated by Taxpayer A on Date 3, the box checked showed election to have a check for Amount N made payable to Taxpayer A and sent to her mailing address.

On Date 4, within one week of Date 3, Financial Institution 1 issued a check for Amount N to Taxpayer A. On Date 5, within 30 days of Date 4, Taxpayer A deposited Amount N into Savings Account Y.

Taxpayer A represents that the treatment plan for her long-term mental illness has been and remains a regimen of prescription medications and frequent visits with her treating psychiatrist (doctor). As documentation, Taxpayer A presented a year-end billing statement which set out the dates of her visits to her doctor in Year 1. The billing statement shows that, up until the month prior to Date 3, Taxpayer A visited her doctor at least once a month.

The billing statement does not show any doctor's visits during a time period beginning approximately one month before Date 3 and ending well after the 60-day rollover period had expired. In a letter, Taxpayer A's long-time doctor confirms that Taxpayer A did not come to see him and did not make any contact with him during the time period described.

Taxpayer A represents that at some point after the divorce, she made a unilateral decision to discontinue all psychiatric treatment. She stopped taking her prescribed medications and she stopped visiting her doctor. As a result of this interruption of treatment, Taxpayer A became seriously ill.

xxxxx
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On Date 6, Taxpayer A was involuntarily confined to a mental health facility where she remained for 2 months during which time the 60-day rollover period expired. A copy of paperwork filed by emergency medical personnel on Date 6 for authorization to involuntarily hospitalize Taxpayer A contains a graphic description of Taxpayer A's mental state and notes full prescription bottles as indicators that Taxpayer A had stopped taking her medications. The doctor's billing statement indicates that Taxpayer A resumed visits with her doctor after she was released from the hospital.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount N from IRA X.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if--

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if, at any time during the 1-year period ending on the day of such receipt, such individual received any other amount described in section

408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3) of the Code.

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(d)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including : (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a timely rollover of Amount N from IRA X into an IRA in her name was due to her mental illness, exacerbated by her discontinuance of treatment, which severely impaired her ability to manage her financial affairs.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution on Date 4 from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount N into an IRA. Provided all other requirements of section 408(d)(3) of the Code except the 60-day requirement are met with respect to such contribution amount will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

Taxpayer A has been informed that the Service will not grant more than one waiver for the same distribution.

This ruling assumes that IRA X satisfied the qualification requirements of section 408 of the Code at all times relevant to this transaction.

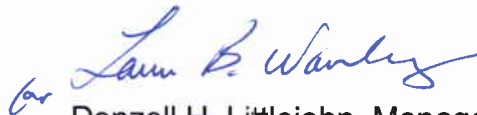
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter has been sent to your appointee in accordance with a Form 8821, Tax Information Authorization, on file in this office.

If you wish to inquire about this ruling, please contact xxxxx, I.D. # xxxxx, by telephone at 202-283- xxxxx. Please address all correspondence to SE:T:EP:RA:T4.

Sincerely yours,

for

Donzell H. Littlejohn, Manager
Employee Plans Technical Group 4

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

cc: xxxxx
xxxxx
xxxxx